No. 82-1802

In The

Supreme Court of the United States

October Term, 1982

IN THE MATTER OF ORVILLE E. HANSEN,
Debtor.

FIRST NATIONAL BANK OF TEKAMAH, NEBRASKA,
Petitioner,

vs.

ORVILLE E. HANSEN and VIRGINIA HANSEN,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS ORVILLE E. HANSEN and VIRGINIA HANSEN IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 102 S. Ct. 2858 (1982), held that no federal court has jurisdiction to consider any bankruptcy matter?

2. Whether district courts may adopt local rules or make special references delegating certain authority to bankruptcy judges to perform clearly defined and limited tasks in bankruptcy cases?

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OPINIONS BELOW

The decision of the Court of Appeals below has now been reported. *In re Orville E. Hansen,* 702 F. 2d 728 (8th Cir. 1983) (per curiam).

REASONS FOR DENYING THE WRIT

The decision of the Court of Appeals is correct. It conflicts with no decision of this Court or any other Court

of Appeals. Further, respondents respectfully state that each of the material issues presented by petitioner herein was presented to this Court on three prior occasions. The identical issues sought to be raised herein were the subject of a petition for writs of prohibition and mandamus filed in this Court on January 24, 1983, in *In re Keene Corporation, GAF Corporation and Pacor, Inc.,* Case No. 82-1242. On February 22, 1983, this Court in Case No. 82-1242, denied the petition for writs of prohibition and mandamus. Identical issues were again presented to this Court in another petition for writs of prohibition and mandamus in *In re International Harvester Company and IH Steel Corporation,* Case No. 82-1385, filed on February 16, 1983. On April 18, 1983, this Court in Case No. 82-1385 again denied the petition for writs of prohibition and mandamus. Again, the identical issues sought to be raised herein were presented to this Court in the petition for writ of certiorari filed in this Court on April 4, 1983 in *American Airlines, Inc. v. Braniff Airways, Inc., et al.,* Case No. 82-1623. In that case, petitioner also sought to raise the identical issues presented by petitioner herein. On May 23, 1983, this Court in Case No. 82-1623 denied the petition for writ of certiorari.

Respondents respectfully submit that the foregoing orders entered by this Court in Case Nos. 82-1242, 82-1385, and 82-1623 are dispositive of all issues and matters raised by the petitioner herein.

I.

The Courts of Appeals have unanimously upheld District Court bankruptcy jurisdiction and the local rule delegation.

The petitioner states that there is "much dispute and disagreement between the lower courts" as to whether there is continuing jurisdiction over bankruptcy matters, with the result of "leaving both litigants and the courts in a state of confusion". (Pet. at 21, 22). This statement is entirely wrong. The fact of the matter is that the body of district court and appellate court decisions upon the issues presented by petitioner has consistently rejected petitioner's arguments.

Since the enactment of the interim rules, the Fifth, Sixth and Eighth Circuit Courts of Appeals have all concluded that district courts do continue to have jurisdiction over bankruptcy matters under 28 U. S. C. §§ 1334 and 1471(a) and (b), and that the interim rules are constitutional and valid.

The Fifth Circuit's per curiam opinion affirmed the decision of the district court therein upholding jurisdiction "essentially for the reasons stated in its memorandum opinion". *Braniff Airways, Inc. v. CAB,* 700 F. 2d 214, 215 (5th Cir. 1983) (per curiam). The district court therein, in turn, had fully responded to the issues the petitioner now seeks to raise in its petition herein. *Braniff Airways, Inc. v. CAB (In re Braniff),* 10 B. C. D. 30 (N. D. Tex. 1983). The district court therein stated that "the difficulty [in *Northern Pipeline*] was *not* in separating § 1471(c) from § 1471(a) and (b), but in separating jurisdiction over . . . a case like *Marathon,* requiring an Art. III court,

from the other appropriate jurisdiction of the Bankruptcy Court". *Id.* at 31 (emphasis in original). The district court determined that this Court "never intended to invalidate, nor did it invalidate 28 U. S. C. § 1471(a) and (b)". *Id.* The opinion further stated that even if *Northern Pipeline* had invalidated 28 U. S. C. § 1471(a) and (b), the district court nonetheless retained bankruptcy court jurisdiction under 28 U. S. C. §§ 1331, 1332, 1334. *Id.* at 31-32.

As concerns the interim rules permitting reference of bankruptcy matters from the district court to the bankruptcy court, the district judge therein determined that the local rule was constitutional and was an authorized exercise of rule-making authority under 11 U. S. C. § 105(a), 28 U. S. C. § 2071, Fed. R. of Civ. Pro. 83, Bankruptcy Rule 927, and the court's inherent equitable powers. *Id.* at 32-34.

Likewise, the Sixth Circuit in *White Motor Corp. v. Citibank, N.A.*, No. 82-3638 (6th Cir. April 1, 1983), also held that district court jurisdiction exists over bankruptcy matters on 28 U. S. C. § 1471(a) and (b) as well as under 28 U. S. C. § 1334. *Id.* at 13-15. The Sixth Circuit went on to state that the district courts "have both the authority to adopt the interim rule and the obligation to provide for the continuing orderly conduct of bankruptcy proceedings". *Id.* at 15. Authority for adoption of the interim rules was found under the congressional mandate to the Judicial Conference of the United States, 28 U. S. C. § 1331, et seq., and under the general rule making authority of the district courts.

On March 23, 1983, the Eighth Circuit issued its unanimous per curiam opinion to the same effect in this case.

First National Bank of Tekamah v. Hansen, 702 F. 2d 728 (8th Cir. 1983).

Thus, all three of the Circuit Courts of Appeals that have reviewed the matter have unanimously rejected the arguments asserted herein by First National Bank of Tekamah. It should be noted that the district courts have also consistently taken the same position.[1] There is no division or confusion in the federal judiciary with respect to the issues raised in First National's petition. Further, as previously noted, this Court has on three separate occasions disposed of the questions presented by First National. Accordingly, there is no need for this Court to review the Eighth Circuit decision to provide consistency on these questions.

II.

The decision of the Court of Appeals is correct.

First National's suggestion that there is a conflict between the Court of Appeal's decision and this Court's

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[1] *In re Q1 Corporation v. Victor Reichenstein*, Cv. No. 83-0525 (E. D. N. Y. March 22, 1983); *In re Matlock Trailer Corp., Walter E. Heller & Company Southeast, Inc. v. Matlock Trailer Corp.*, Gen. Dkt. No. 3:83-X-5 (M. D. Tenn. Feb. 23, 1983); *In re Color Craft Press, Ltd.: Color Craft Press Ltd. v. Nationwide Shopper Systems, Inc.* and *In re Kent D. Richardson and F. Nadine Richardson: Gillman, et al. v. Preston Family Invest. Co., et al.*, 10 B.C.D. 182 (D. Utah Feb. 22, 1983) rev'ing 10 B.C.D. 53 and Bk. No. 82C-0736, supra; *In re Braniff Airways, Inc.: Braniff Airways, Inc. v. Civil Aeronautics Bd.*, Misc. No. 4-221-E (N. D. Tex. 1983); *In re Northland Point Partners*, 26 B. R. 860 (E. D. Mich. Jan. 7, 1983), order adhered to 26 B. R. 1019 (E. D. Mich. Feb. 8, 1983) [certified to 6th Circuit under 28 U. S. C. § 1292(b) by Order entered Feb. 8, 1983]; *Moody v. Martin*, 27 B. R. 991 (W. D. Wis. 1983); *Otero Mills, Inc. v. Security Bank & Trust*, No. 82-373-M, slip op. (D.N.M. Feb. 28, 1983); *Prudential Ins. Co. v. Stouffer Corp.*

ruling in *Northern Pipeline* appears to be an overly broad and incorrect reading of *Northern Pipeline*. While *Northern Pipeline* invalidated the jurisdiction of the bankruptcy courts under the Bankruptcy Reform Act on the basis that the bankruptcy courts could not exercise the same jurisdiction conferred on Art. III courts, the Court of Appeals correctly held that *Northern Pipeline* did not invalidate the District Court's bankruptcy jurisdiction. The sole issue presented in *Northern Pipeline,* as noted in the four-Justice plurality opinion was "whether the assignment by Congress to *bankruptcy judges* of the jurisdiction granted in § 241(a) of the [Reform Act] violates Art. III of the Constitution". 102 S. Ct. at 2862 (emphasis added). The plurality opinion did not extend any further than to hold that "the broad grant of jurisdiction *to the bankruptcy courts* contained in § 241(a) (at 28 U. S. C. § 1471(a)) is unconstitutional". 102 S. Ct. at 2880 (emphasis added).

As have previous petitioners to this Court, First National suggests that Footnote 40 of the plurality opinion provides a basis for the position that no jurisdiction continues to exist in the district court over bankruptcy matters. Such interpretation of footnote 40 is erroneous. Footnote 40 to the plurality opinion replied to a suggestion by Chief Justice Burger, in dissent, that Congress could remedy the Art. III problem by referring to the district courts the kind of state law claims at issue in *Northern Pipeline* and by leaving intact the remaining jurisdiction of the bankruptcy courts. 102 S. Ct. at 2882. The plurality responded in footnote 40 to the Chief Justice by saying that it was not for the Court to anticipate how Congress would redefine or reallocate bankruptcy court jurisdiction after the *Northern Pipeline* holding. The

plurality's reference in the footnote was exclusively to the jurisdiction of the bankruptcy courts.[2]

The two-Justice concurring opinion written by Justice Rehnquist agreed that the Bankruptcy Court could not exercise jurisdiction of *Northern Pipeline's* common law action against *Marathon*. Justice Rehnquist and Justice O'Connor, however, were unwilling to decide any other constitutional question on the jurisdiction of the bankruptcy courts, and did not even address the issue of the jurisdiction of the district courts. 102 S. Ct. 2881. In seeking to limit the Order to be entered by this Court, Justice Rehnquist stated:

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[2]Footnote 40 states in full:

"It is clear that, at the least, the new bankruptcy judges cannot constitutionally be vested with jurisdiction to decide this state-law contract claim against Marathon. As part of a comprehensive restructuring of the bankruptcy laws, Congress has vested jurisdiction over this and all matters related to cases under Title 11 in a single non-Art. lil court, and has done so pursuant to a single statutory grant of jurisdiction. In these circumstances, we cannot conclude that if Congress were aware that the grant of jurisdiction could not constitutionally encompass this and similar claims, it would simply remove the jurisdiction of the bankruptcy court over these matters, leaving the jurisdictional provision and adjudicatory structure intact with respect to other types of claims, and thus subject to Art. III constitutional challenge on a claim-by-claim basis. Indeed, we note that one of the express purposes of the Act was to ensure adjudication of all claims in a single forum and to avoid the delay and expense of jurisdictional disputes. See H.R. Rep. No. 95-595, supra, pp. 43-48; S. Rep. No. 95-989, p. 17 (1978). Nor can we assume, as THE CHIEF JUSTICE suggests, post, p. 2, that Congress' choice would be to have this case 'routed to the United States district court of which the bankruptcy court is an adjunct'. We think that it is for Congress to determine the proper manner of restructuring the Bankruptcy Act of 1978 to conform to the requirements of Art. III, in the way that will best effectuate the legislative purpose". 102 S. Ct. at 2880 n. 40 (emphasis added).

> "I would, therefore, hold so much of the Bankruptcy Act of 1978 as enables a *Bankruptcy Court* to entertain and decide Northern's lawsuit over Marathon's objection to be violative of Art. III of the United States Constitution. Because I agree with the plurality that this grant of authority is not readily severable from the remaining grant of authority *to Bankruptcy Courts* under § 241(a), see (Footnote 40), I concur in the judgment". 102 S. Ct. at 2882 emphasis added).

Northern Pipeline did not divest the district courts of bankruptcy jurisdiction that Congress set forth in 28 U. S. C. § 1471(a) and (b).

Furthermore, district court bankruptcy jurisdiction continues under 28 U. S. C. § 1334 and 28 U. S. C. § 1331. Whatever the effect of *Northern Pipeline* on the Bankruptcy Reform Act jurisdiction, these jurisdictional provisions certainly authorize the district courts to hear and decide bankruptcy related matters. Section 1334 grants the district courts "original jurisdiction, exclusive of the courts of the States, of all matters and proceedings in bankruptcy". 28 U. S. C. § 1334. Even though the Reform Act makes amendments to §1334, the jurisdictional grant of the original § 1334 remains in full force and effect until April 1, 1984. Reform Act § 402(b).

First National suggests that *Northern Pipeline* invalidated § 1471(a) and (b). On the other hand, First National thereafter argues that 28 U. S. C. § 1471(a) and (b) served to cause the expiration of old § 1334. These positions are inconsistent. If § 1471(a) and (b) repealed § 1334 as of October 1, 1979 (as asserted by First National), then the invalidation of those sections by *Northern Pipeline* would automatically revive § 1334. A void act cannot operate to repeal a valid existing statute, and the

existing statute would remain in full force and operation as if the repeal had never been attempted. *Weissinger v. Boswell,* 330 F. Supp. 615, 625 (M. D. Ala. 1971); *Conlon v. Adamski,* 77 F. 2d 397, 399 (D. C. Cir. 1935).

Additionally, this Court has historically recognized that federal question jurisdiction under 28 U. S. C. § 1331 includes the exercise of jurisdiction under federal bankruptcy laws. § 1331 grants district courts original jurisdiction of all civil actions arising under the laws of the United States. *Hull v. Burr,* 234 U. S. 712, 720-22 (1914); *Lovell v. Newman & Son,* 227 U. S. 412, 423 (1913); *National Mutual Insurance Co. v. Tidewater Transfer Co.,* 337 U. S. 582, 611 (1949).

III.

The Court of Appeals decision upholding the local rule is correct.

The plurality opinion in *Northern Pipeline* acknowledged that district court "adjuncts" are not violative of Art. III requirements "so long as those adjuncts (are) subject to sufficient control by an Art. III district court". 102 S. Ct. at 2875. The local rule in question here complies with the constitutional standards referred to in *Northern Pipeline* because it does retain the ultimate decision-making authority in the district court, not the adjunct. 102 S. Ct. at 2874-76. Under the local rule, bankruptcy courts operate under the control of the district courts. Bankruptcy judges derive authority solely by reference from a District Court and have no independent jurisdiction. The District Court may withdraw or limit the reference at any time. Only the District Court may conduct jury trials, and in all matters try to the Bank-

ruptcy Court there is a right to a de novo district court review. Ultimately, the District Court makes the final decisions under the local rule.

All nine justices in *Northern Pipeline* recognized that Congress may create legislative courts or adjuncts to adjudicate congressionally created rights. 102 S. Ct. at 2869-71, 2874-78, 2882, and 2883. The plurality also recognized the use of legislative courts to adjudicate "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power". 102 S. Ct. at 2871. Clearly, the scope of the local rule is consistent with the concerns expressed by this Court in *Northern Pipeline.*

Further, the local rule was properly enacted for the purpose of the administration of court business. The judicial counsels of the circuit courts have been granted statutory authority to "make all necessary and appropriate orders for the effective and expeditious administration of justice within (the) circuits". 28 U. S. C. § 332(d)(1). This Court has determined that this grant of power to the judicial counsel is constitutional. *Chandler v. Judicial Council of the Tenth Circuit,* 398 U. S. 74 (1970). The various judicial counsels of the circuits acted pursuant to this grant of power when they promulgated their resolutions directing the district courts to adopt the local rule. The Court of Appeals correctly ruled that the local rule was a constitutional exercise of judicial authority.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for writ of certiorari submitted by First National Bank of Tekamah.

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